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**FAX**

Date May 31, 2005

To Mr. Charles Steven Brantley, Petitions Attorney

Of USPTO - Office of Petitions

Fax 703 872 9306

From Robert V. Sloan

Subject 09/744,801 - Group Art Unit 3749

Our Ref Q62918      Appln No 09/744,801

Conf No 4826      Inventors Rick K. LAZARO 'J

Pages 4 (including cover sheet)

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This fax filing includes:

1. This cover sheet
2. Renewed Petition Under 37 C.F.R. § 1.137(b)
3. Response copy of Dismissed Petition

**CERTIFICATION OF FACSIMILE TRANSMISSION**

Sir:

I hereby certify that the above identified correspondence is being facsimile transmitted to Mr. Charles Steven Brantley, Petitions Attorney at the U.S. Patent and Trademark Office on May 31 2005 at 703 872 9306.

Respectfully submitted,

Robert V. Sloan

RVS/yst

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PATENT APPLICATION

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re application of

Attorney Docket No: Q62916 *H3*

Rick K. LAZAROU

Appln. No.: 09/744,801

Group Art Unit: 3749

Confirmation No.: 4826

Examiner: G Wilson

Filed: January 30, 2001

For: CARBON BAKING FURNACE

RENEWED PETITION UNDER 37 C.F.R. § 1.137(b)

MAIL STOP PETITIONS  
Commissioner for Patents  
P.O. Box 1450  
Alexandria, VA 22313-1450

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Sir:

In the Decision on Petition mailed April 1, 2005, the Petition was dismissed on the grounds that the required reply, namely the Issue Fee, was not submitted with the Petition. In order to overcome this error, please charge the Issue Fee in the small entity amount due of \$640.00 to Deposit Account 19-4880. The failure to timely file the Issue Fee was unintentional.

An early and favorable Action is respectfully requested.

Respectfully submitted,

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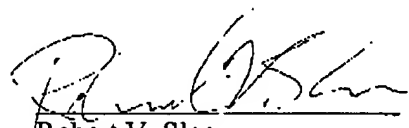
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SUGHRUE MION, PLLC  
Telephone: (202) 293-7060  
Facsimile: (202) 293-7860

WASHINGTON OFFICE

23373

CUSTOMER NUMBER



Robert V. Sloan  
Registration No. 22,775

Date: May 31, 2005



UNITED STATES PATENT AND TRADEMARK OFFICE

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 Commissioner for Patents  
 United States Patent and Trademark Office  
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Sughrue Mion Zinn Macpeak & Seas  
 2100 Pennsylvania Avenue NW  
 Washington, DC 20037-3202

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APR 01 2005

OFFICE OF PETITIONS

In re Application of  
 Lazarou et al.  
 Application No. 09/744,801  
 Filed: January 30, 2001  
 Attorney Docket No. Q62916

DOCKETED

APR 05 2005

Decision on Petition

Sughrue Ref: Si 46? 116

This is a decision on the petition under 37 CFR 1.137(b), filed December 3, 2004, to revive the above-identified application.

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The petition is **DISMISSED**.

JUN 13 2005

Any request for reconsideration must be submitted within TWO (2) MONTHS from the mailing date of this decision. No further petition fee is required for the request. Extensions of time under 37 CFR 1.136(a) are permitted. The reconsideration request should include a cover letter entitled "Renewed Petition under 37 CFR 1.137(b)."

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The above-identified application became abandoned for failure to submit formal drawings and the issue fee in a timely manner in reply to the Notice of Allowability and Notice of Allowance mailed October 23, 2001. Accordingly, the above-identified application became abandoned on January 24, 2002. A Notice of Abandonment was mailed on May 16, 2002.

A grantable petition under 37 CFR 1.137(b) must be accompanied by:

- (1) the required reply,
- (2) the petition fee,
- (3) a statement that the entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition pursuant to 37 CFR 1.137(b) was unintentional,<sup>1</sup> and
- (4) a terminal disclaimer and fee if the application was filed on or before June 8, 1995 or if the application is a design application.

The instant petition lacks item (1).

Petitioner filed a Request for Continued Examination under §1.114 (and RCE Fee) and submission (an amendment) as the proposed reply. However, the required reply is the reply sufficient to have avoided abandonment had such reply been timely filed. In an application for patent, abandoned or lapsed for failure to pay the issue fee or any portion thereof, the required reply must be the payment of the issue fee or any outstanding balance thereof.

35 U.S.C. 151 authorizes the acceptance of a delayed payment of the issue fee, if the issue fee "is submitted ... and the delay in payment is shown to have been unavoidable."

35 U.S.C. 41(a)(7) likewise authorizes the acceptance of an "unintentionally delayed payment of the fee for issuing each patent."

<sup>1</sup> Where there is a question as to whether either the abandonment or the delay in filing a petition under 37 CFR 1.137 was unintentional, the Commissioner may require additional information. See MPEP 711.03(c)(III)(C) and (D).

Application No. 09/744,801

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Both 35 U.S.C. 41(a)(7) and 151 each require payment of the issue fee as a condition of re-iving an application abandoned or patent lapsed for failure to pay the issue fee. A reply that serves to continue prosecution in an application, such as an RCE, is not sufficient to satisfy either §1: 1 or 41(a)(7). The Commissioner does not have the authority to waive these statutory requirements.

Petitioner is advised that any issue fee paid with a request for reconsideration may be applied towards the issue fee required by a new Notice of Allowance. In order to have the issue fee applied towards any fees required by a future Notice of Allowance, written instructions including such a request must be filed in response to the new Notice of Allowance.

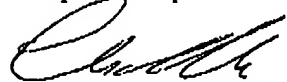
Further correspondence with respect to this matter should be addressed as follows:

By mail: Mail Stop Pctition  
Commissioner for Patents  
P.O. Box 1450  
Alexandria, VA 22313-1450

By facsimile: (703) 872-9306  
Attn: Office of Petitions

If a request for reconsideration is filed, and a decision on the new petition is not received within three months, petitioner may wish to call the number below to check on the status of the renewed petition.

Telephone inquiries should be directed to Petitions Attorney Steven Brantley at (571) 272-203.



Charles Steven Brantley  
Petitions Attorney  
Office of Petitions